

### Remarks

Claims 1-20 remain pending in the Application. No new matter has been added.

### Claim Rejection 35 USC 101

In the Office Action, Claims 1-10 and 16-20 are rejected under 35 U.S.C. §101 because the claimed invention is directed to non-statutory subject matter. The Examiner has stated that the Claimed matter is not embodied on a tangible readable medium.

Applicant respectfully points out that in the office action dated January 3, 2006, Claims 6-10 and 16-20 were rejected under 35 U.S.C. §101 because the claimed invention is directed to non-statutory subject matter. In response to the Office Action dated January 3, 2006, Applicants amended Independent Claims 6 and 16 according to the Examiners suggestions presented in the Office Action dated January 2, 2006. The current Office Action fails to address the amendments made to Claims 6 and 16.

Applicant respectfully submits that Claims 1-10 and 16-20 are directed to patentable subject matter. Applicants respectfully direct the Examiner to MPEP 2107.02(IV) which recites in part (emphasis added):

"To properly reject a claimed invention under 35 U.S.C. 101, the Office must (A) make a *prima facie* showing that the claimed invention lacks utility, and (B) provide a sufficient evidentiary basis for factual assumptions relied upon in establishing the *prima facie* showing. *In re Gaubert*, 524 F.2d 1222, 1224, 187 USPQ 664, 666 (CCPA 1975) ("Accordingly, the PTO must do more than merely question operability - it must set forth factual reasons which would lead one skilled in the art to question the objective truth of the statement of operability.").... The *prima facie* showing must be set forth in a well-reasoned statement. Any rejection based on lack of utility should include a detailed explanation why the claimed invention has no specific and substantial credible utility. Whenever

possible, the examiner should provide documentary evidence regardless of publication date (e.g., scientific or technical journals, excerpts from treatises or books, or U.S. or foreign patents) to support the factual basis for the *prima facie* showing of no specific and substantial credible utility. If documentary evidence is not available, the examiner should specifically explain the scientific basis for his or her factual conclusions.

Applicants respectfully submit that the Examiner has not satisfied the requirements outlined above. In particular, Applicants respectfully assert that the Examiner has not made a *prima facie* showing that the claimed invention lacks utility and has not provided substantial evidentiary basis relied upon in making a *prima facie* showing. Applicants submit that the statement "No physical transformation is recited and additionally, the final result of the claim is an optimization which is not a tangible result because the result is not stored on a computer readable medium" (see detailed action section 4) is not sufficient to support a *prima facie* showing. Moreover, no evidentiary support is provided by the Examiner.

Furthermore, Claim 1 is directed to a method for providing a graphic representation of code characteristics which is then displayed (e.g., to a user) to indicate that the at least one instruction characteristic is present in the block of code. Applicants respectfully submit that one of skill in the art at the time of the invention would understand that the method of Claim 1 includes practical utility by providing a process for indicating that the at least one instruction characteristic is present in the block of code. Furthermore, Applicant submits that displaying the graphic representation results in a useful and tangible result. Therefore, Applicants respectfully submit that Claim 1 overcomes the rejection under 35 U.S.C. §101, as Claim 1 is directed toward patentable subject matter.

Claims 6 and 16 are directed towards a system for providing a graphic representation of code characteristics tangibly embodied on a computer readable

medium. For the same rational presented above, displaying the graphical representation results in a tangible and useful result.

As such, Applicant respectfully asserts that Claims 1-10 and 16-20 are directed to statutory subject matter and respectfully requests that the 101 rejection to Claims 1-10 and 16-20 be removed.

Rejection under 102(b)

Claims 1, 6, and 11

Claims 1, 6 and 11 are rejected under 35 U.S.C. 102(b) as being anticipated by Robert Jacob's teaching of "A State Transition Diagram Language for Visual Programming," August 1985, hereafter referred to as VP. The rejection is respectfully traversed for the following rational.

Applicant respectfully states that Claims 1, 6, and 11 include the same or similar features "acquiring a block of code in a program;

analyzing the block of code for at least one instruction characteristic;

generating a unique graphical indicator for the at least one instruction characteristic; and

displaying the unique graphical indicator with the block of code to indicate that the at least one instruction characteristic is present in the block of code."

Support for the Claimed features can be found in the Figures and Specification including Figure 2 and page 11 lines 3-14 of the Specification.

According to the Federal Circuit, "[a]nticipation requires the disclosure in a single prior art reference of each claim under consideration" (W.L. Gore & Assocs. v. Garlock Inc., 721 F.2d 1540, 220 USPQ 303, 313 (Fed. Cir. 1983)). However, it is not sufficient that the reference recite all the claimed elements. As stated by the Federal Circuit, the prior art reference must disclose each element of the claimed invention "arranged as in the claims" (emphasis added; Lindermann Maschinenfabrik GmbH v. American Hoist & Derrick Co., 730 F.2d 1452, 221 USPQ 481, 485 (Fed. Cir. 1984)).

In the present Office Action, VP has been relied upon to anticipate the features of Claims 1, 6, and 11. However, Applicant respectfully disagrees that the teachings of VP do disclose each element of the claimed invention arranged as in the claims.

Applicant respectfully points out the claimed features clearly recite acquiring a block of code in a program. Analyzing the block of code for at least one instruction characteristic, generating a unique graphical indicator for the at least one instruction characteristic and displaying the graphical indicator with the block of code to indicate that the at least one instruction characteristic is present in the block of code.

Specifically, Applicant respectfully points out that the Claims 1, 6, and 11 include the claimed feature “acquiring a block of code in a program.” This is not analogous to VP. That is, Applicant does not understand VP to acquire a block of code. Instead, Applicant understands VP to teach the construction of a block of code program using a plurality of visual tools wherein the program is the resultant not the acquisition. Therefore, if VP teaches construction of a program, then VP cannot teach acquiring a block of code in a program (emphasis added). For this reason, Applicant respectfully states that Claims 1, 6, and 11 are not anticipated under 35 U.S.C. §102(b) as being anticipated by VP.

For this further reason, Applicant respectfully states that Claims 1, 6, 11 and 16 are not anticipated under 35 U.S.C. §102(b) as being anticipated by VP and are therefore allowable. Thus, Applicant submits that the rejection under 102(b) is overcome and requests the rejection be removed for the rational presented above.

Rejection under 103(a)

Claims 1-20

In the Office Action, the Examiner rejected Claims 1-20 under 35 USC 103(e) as being unpatentable over VP in view of TMS320C6X Optimizing Compiler User's Guide, Texas Instruments 2000 (hereinafter TI). Applicant has reviewed the cited references and respectfully submits that the present invention is not rendered obvious over VP in view of TI for the following rationale.

Applicant respectfully points out that Independent Claims 1, 6, 11 and 16 include the features "acquiring a block of code in a program;  
analyzing the block of code for at least one instruction characteristic;  
generating a unique graphical indicator for the at least one instruction characteristic; and

displaying the unique graphical indicator with the block of code to indicate that the at least one instruction characteristic is present in the block of code." Support for the Claimed features can be found in the Figures and Specification including Figure 2 and page 11 lines 3-14 of the Specification.

For the reasons provided herein in the discussion regarding the rejection under 35 U.S.C. §102(b) as being anticipated by VP Applicant respectfully submits that VP does not teach the claimed features.

Moreover, Applicant respectfully disagrees that TI overcomes the shortcomings of VP. That is, Applicant does not understand TI to teach the features "acquiring a block of code in a program; analyzing the block of code for at least one instruction characteristic; generating a unique graphical indicator for the at least one instruction characteristic; and displaying the unique graphical

indicator with the block of code to indicate that the at least one instruction characteristic is present in the block of code."

Therefore, Applicant respectfully submits that neither VP nor TI, alone or in combination, make obvious the features acquiring a block of code in a program; analyzing the block of code for at least one instruction characteristic; generating a unique graphical indicator for the at least one instruction characteristic; and displaying the unique graphical indicator with the block of code to indicate that the at least one instruction characteristic is present in the block of code as recited in Independent Claims 1, 6, 11 and 16, and as such, Claims 1-20 are patentable over VP in view of TI and are in condition for allowance.

Conclusion

In light of the above remarks, Applicant respectfully requests allowance of Claims 1-20.

The Examiner is invited to contact Applicants' undersigned representative if the Examiner believes such action would expedite resolution of the present application.

Respectfully submitted,  
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